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**Myers Investigative and Security Services, Inc. and
Industrial, Technical and Professional Employees Union.** Case 5–CA–31808

September 23, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND
MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on March 16, 2004, the General Counsel issued the complaint on June 23, 2004, against Myers Investigative and Security Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On August 25, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On August 26, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by July 7, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated July 13, 2004, notified the Respondent that unless an answer was received by July 27, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with a main office in Dunn, North Carolina, and an office

and place of business in Alexandria, Virginia, the only location involved herein, has been engaged in the business of providing security services.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in states other than the State of North Carolina. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Industrial, Technical and Professional Employees Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, William Fred Myers has been the Respondent's president and/or chief executive officer, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b)(3) of the Act:

All full time and regular part time nonsupervisory employees of Respondent; but excluding all managerial employees and supervisory employees as defined by the Act.

Since in or around April 2001, the Union has been designated as the exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from April 4, 2003, to April 3, 2006.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining agent of the unit.

Since on or about January 27, 2004, the Respondent has refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit.¹

Since on or about January 27, 2004, the Union, by memorandum sent to William Fred Myers, has requested that the Respondent furnish the Union with written documents received by the Respondent from a "Government official" who requested the removal of employee

¹ This conduct is not alleged as a violation of the Act.

Walter Thomas from a site identified as The Hoffman Building “because of safety/medical reasons.”

The information requested by the Union is necessary for, and relevant to, the Union’s performance of its duties as the exclusive collective-bargaining representative of the unit.

Since on or about January 27, 2004, the Respondent has failed to furnish the Union with the information described above in a timely manner, or has refused to disclose to the Union that no such information exists.

CONCLUSION OF LAW

By refusing to furnish the Union with the information requested in its January 27, 2004 memorandum, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.²

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested in its memorandum of January 27, 2004.

ORDER

The National Labor Relations Board orders that the Respondent, Myers Investigative and Security Services, Inc., Alexandria, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish Industrial, Technical and Professional Employees Union with information necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time nonsupervisory employees of Respondent; but excluding all managerial employees and supervisory employees as defined by the Act.

² Our conclusion of law is in conformity with par. 12 of the complaint, which alleges that the Respondent has violated Sec. 8(a)(5) and (1) only by its refusal, since January 27, 2004, to furnish the Union with the requested information.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the information it requested by memorandum dated January 27, 2004.

(b) Within 14 days after service by the Region, post at its facility in Alexandria, Virginia, copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 27, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 23, 2004

Robert J. Battista, Chairman

Dennis P. Walsh, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to furnish Industrial, Technical and Professional Employees Union with in-

formation necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All of our full time and regular part time nonsupervisory employees; but excluding all managerial employees and supervisory employees as defined by the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information it requested by memorandum dated January 27, 2004.

MYERS INVESTIGATIVE AND SECURITY SERVICES, INC.